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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/083,038	02/26/2002	Steven M. Ayres	90099008	3133

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EXAMINER

DUONG, THO V

ART UNIT	PAPER NUMBER
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3743

DATE MAILED: 01/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/083,038	Applicant(s) AYRES ET AL.	
	Examiner Tho v Duong	Art Unit 3743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 5,6 and 16-18 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 20 is/are allowed.
- 6) ☒ Claim(s) 1-4,7-15 and 19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Receipt of applicant's amendment filed 10/29/2004 is acknowledged. Claims 1-20 are pending. Claims 5,6 and 16-18 remain withdrawn from further consideration.

Response to Arguments

In view of applicant's amendment, the objections to the specification and claim 20 have been withdrawn.

Applicant's argument that Hoffmuller's core expands longitudinally but not laterally (side to side) has been very carefully considered but is not deemed to be persuasive. Hoffman clearly discloses (figure 1) that the core (3,19) is expandable in a horizontally direction or from the left - right direction (side to side). In response to applicant's argument that reference to Hoffmuller does not disclose a single mount, the examiner interprets that each mount (23) is considered to be a single mount.

Furthermore, if applicant, later amends the claim to include only a single mount (emphasis added) disposed between the support structure and the core, which definitely will raise a new issue to the claims, an obvious type rejection against claims 1-4, 7-15 and 19 would be applicable. (See 103 rejection).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Claims 1-4,7-15 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Hoffmuller (US 4,328,860). Hoffmuller discloses (figures 1 and 7) a heat exchanger comprising a laterally expandable core (3,19) having a variable size, a lower temperature port and a higher temperature port (35,38 or 11); a support structure (22,24 or 5); a mount (23,40 or 22,26,27) positioned between the core and the support structure adjacent to the second port (38 or 11), wherein the mount restrains the core such that the core varies in size laterally away from and toward the mount; a bellows (16) attached to the core, such that the bellows (16) and the first port (35 or 11) are in fluid communication as the core varies in size; the mount comprises a pin (23) formed with the support (22,24) and a receiver (40 or 26,27) defined in the core to receive the pin; and a substantially rigid connector (18) positioned such that the bellows (16) and the higher temperature fluid port (38 or 11) are in fluid communication. Regarding the term "single mount", each pin (23) is considered to be a single mount. Regarding the term "laterally", Hoffmuller discloses (figure 1) that the core (3,19) is capable of varying in size laterally (horizontally or side to side direction) away from and towards the mount (23).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4,7-15 and 19 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Hoffmuller. Since the claims must be interpreted broadly as their terms reasonably allow, both elements (24) and (5), which shown in

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figure 1 of Hoffmuller, can be considered to a support structure. If element (24) is considered to be a support structure, there is only one mount (23) is disposed between the core (3,19) and the support structure (24). Therefore, claims 1-4,7-15 and 19 are rejected under 35 U.S.C 102 (b) as anticipated by Hoffmuller. If element (5) is considered to be a support structure, Hoffmuller do not disclose that only one mount is disposed between the core and the support structure.

However, applicant does not disclose that the number of mount, either only one or more than one, would solve any stated problem, or is for any particular purpose. One of ordinary skill in the art would have expected applicant's invention to perform equally well with one or more than one mount because the number of mount does not effect the working principle of the invention. Accordingly, the use of only one mount is deemed to be design consideration, which fails to patentably distinguish over the prior art of Hoffmuller.

Allowable Subject Matter

Claim 20 is allowed.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after

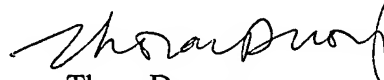
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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tho v Duong whose telephone number is 571-272-4793. The examiner can normally be reached on M-F (first Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennet can be reached on 571-272-4791. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Tho v Duong
Examiner
Art Unit 3743



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January 14, 2005